

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

**TIM L MATTINGLY**  
Claimant

**APPEAL NO. 15A-UI-10355-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BURKE MARKETING CORPORATION**  
Employer

**OC: 08/16/15**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Burke Marketing Corporation filed a timely appeal from a representative's decision dated September 8, 2015, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on September 29, 2015. Claimant participated. The employer participated by Ms. Shelli Seibert, Human Resource Manager. Employer's Exhibits One, Two, Three, Four and Five were admitted into the record.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all the evidence in the record, the administrative law judge finds: Tim Mattingly was employed by Burke Marketing Corporation from September 15, 2014 until July 28, 2015, when he was discharged from work. Mr. Mattingly was employed as a full-time packaging room worker and was paid by the hour. His immediate supervisor was Dan Mull.

Mr. Mattingly was discharged from his employment with Burke Marketing Corporation after he had exceeded the permissible number of attendance infractions allowed under the company's no-fault attendance policy. Under the terms of the policy, in January of each year non-exempt employees are given two, or more days of personal time off credits based upon the current attendance standing and may use the personal time credits to offset time away from work that has not been previously approved or authorized by other company policies. One credit is equal to one work shift regardless of working hours in the shift. A maximum of four credits of personal time are allowed per year to offset absences and must be taken in half shift increments. The personal time credits may be used for unplanned absences, family emergencies, tardies and sick time. After an employee has offset the number of personal time credits available to them, the employee becomes subject to discharge if they accumulate four attendance infraction points for additional absences, leaving early or tardies within a one-year period. Employees receive a one-half point for being tardy less than one-half shift or come or leaving early more than

one-half shift and one point for tardiness or leaving early greater than one-half shift and one point for being absent on a full shift. Employees receive warnings as they accumulate each infraction point. Employees are subject to discharge when they accumulate four attendance infraction points within a one-year period. Attendance infractions roll off after one year. Mr. Mattingly was aware of the policy and had been warned.

Mr. Mattingly was discharged on July 28, 2015 when he exceeded the permissible number of infraction points allowed by policy.

The attendance infraction that caused Mr. Mattingly to exceed the permissible number of infraction points allowed under the company policy took place on July 23, 2015 when Mr. Mattingly left work early because of a family emergency. The claimant's sister had been unexpectedly hospitalized and subsequently passed away. Based upon the final warning that had been served upon Mr. Mattingly about his attendance, the claimant was aware that leaving early on July 23 would result in his discharge from employment. The claimant did not report for work the following day, July 24, 2015 for that reason, but notified the employer that he would not be reporting that day. Of the eleven instances of absence or leaving work early cited by the employer, six of the infractions were due to the illness of Mr. Mattingly or his family.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does not.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or

incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

In discharge cases the employer has the burden of proof to establish disqualifying misconduct on the part of a claimant. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In order for a claimant's absences to constitute misconduct that will disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's unexcused absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absence related to issues of personal responsibility such as transportation or oversleeping are considered unexcused. Absences related to illness are considered excused providing the employee has complied with the employer's policy regarding notifying the employer of the absence.

The evidence in the record establishes that the most recent attendance infraction that prompted the claimant's discharge from employment took place on July 23, 2015 when Mr. Mattingly left work early because his sister had been unexpectedly hospitalized with a life-threatening medical issue. Mr. Mattingly properly notified the company that he needed to leave work early that day and did so although he was aware that any additional infraction points assessed against him would result in his termination from employment. The claimant did not again report for work as company policy dictated that he would be discharged if he accumulated any additional infraction points.

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes that Mr. Mattingly was discharged under non-disqualifying conditions. Accordingly, the claimant is eligible to receive unemployment insurance benefits providing that he meets all other eligibility requirements of Iowa law. The final infraction that caused the claimant's discharge took place when the claimant was required to leave early due to the sickness of a family member and the claimant had properly notified the employer of his inability to complete the work shift that day. While the employer's decision to terminate Mr. Mattingly may have been a sound decision from a management viewpoint, the evidence in the record does not establish misconduct sufficient to warrant the denial of benefits.

**DECISION:**

The representative's decision dated September 8, 2015, reference 01, is affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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